IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision:-**24.2.2009**

M/s New Diwan Oil Mills, Chandigarh

---Applicant

Versus

The Commissioner of Income Tax, Patiala

---Respondent

CORAM:- HON'BLE MR.JUSTICE J.S.KHEHAR
HON'BLE MR.JUSTICE NAWAB SINGH

Present:- Mr.Akshay Bhan, Advocate for the applicant.

Ms.Urvashi Dhugga, Advocate for the respondent.

J.S.KHEHAR, J. (ORAL)

The applicant-assessee i.e. M/s New Diwan Oil Mills, Chandigarh filed its return of income on 27.7.1983 disclosing an income of Rs.1,48,800/-. This return was accepted by the revenue on 20.1.1984. The revenue conducts a survey under Section 133-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The aforesaid survey was conducted on the business premises of the applicant-assessee. During the course of the aforesaid survey, discrepancies of stocks were found. In order to get over the aforesaid discrepancies, the applicant-assessee accepted to disclose the goods/stock to the tune of Rs.1 lac. Accordingly, the applicant-assessee acknowledged an additional income of Rs.1 lac. This acceptance at the hands of the applicant-assessee took place on the date of survey, namely, on 20.1.1984.

On 14.3.1984 the applicant-assessee filed a revised return for the financial year 1982-1983 (assessment year 1983-84). In the aforestated revised return submitted by the applicant-assessee under Section 139 (5) of

the Act, the applicant-assessee claimed a set off on account of loss to the tune of Rs.1,48,950/-. The question which arises for consideration in adjudication of the present reference is whether the aforesaid set off of loss, could be claimed by the applicant-assessee in the return filed for the assessment year 1983-84.

It is also necessary for us to narrate the foundational facts on the basis whereof the respondent-revenue has based its claim that the aforestated loss having accrued in the year 1978, set off on the basis thereof, could be claimed by the applicant-assessee only during the assessment year 1978-79. The claim of the applicant-assessee, on the other hand is, that the loss under reference was never acknowledged. The stock in question continued to be consistently reflected in the closing stock of the applicant-assessee, wherein, it was shown as lying with the Punjab State Warehousing Corporation, Chandigarh (hereinafter referred to as "PSWC") throughout. As per inventory of the closing stock filed with the return of income, for the assessment year 1978-79, till the assessment year 1983-84, the said position remained unchanged.

It is not a matter of dispute that the applicant-assessee was carrying on the business of running a solvent plant at Chandigarh. It is not a matter of dispute that the stock in question was stored in the godown of the PSWC. It is also not a matter of dispute that the goods/stock belonging to the applicant-assessee were destroyed on account of a fire while they were stored in the godowns of the PSWC on 26.3.1978. It is therefore, the case of the respondent-revenue that the instant loss had taken place during the financial year 1977-78 (assessment year 1978-79), and as such, in terms of the mandate of Section 71 of the Act, the same could have been set off as

loss, only during the said assessment year i.e. 1978-79.

As against the aforesaid claim of the respondent-revenue, the case of the applicant-assessee is, that applicant-assessee filed a civil suit on 15.11.1978, wherein, the applicant-assessee had impleaded the PSWC as defendant No.1, and the General Insurance Company (with whom the goods stored in the godowns of the PSWC were insured) as defendant No.2. Since the goods/stock in question had been burnt in the godown of the PSWC, the applicant-assessee claimed reimbursement of the same, from aforesaid defendant Nos.1 and 2. The civil suit filed by the applicant-assessee was however dismissed on 31.5.1982. It is therefore, the case of the applicant-assessee, that the applicant-assessee realized, that the aforesaid claim was not reimbursable from the PSWC, and as such, accepted the same as the loss suffered by the applicant-assessee itself, for the first time. Since the aforesaid loss in the hands of the applicant-assessee became clear, only on dismissal of the civil suit filed by the applicant-assessee, the same must be deemed to have crystalized only during the financial year 1982-83 (assessment year 1983-84). It is therefore, that the applicant-assessee filed a revised return seeking set off of the aforesaid loss of goods/stock, in the revised return filed on 14.3.1984.

During the course of hearing, two judgments have been cited. The first at the hands of the learned counsel for the respondent-revenue namely, Commissioner of Income-Tax, Lucknow v. Indian Turpentine & Rosin Co. Ltd. (1980) 124 ITR 830. In the case relied upon by the learned counsel for the respondent-revenue, in the previous year relevant to the assessment year 1966-67, the respondent-assessee despatched certain goods to Madras. Necessary entries were recorded in the books of account,

wherein, the goods were debited in the purchaser's account and the sale proceeds were credited in the account of the respondent-assessee. The purchaser of the goods did not accept the goods. Thereafter, on the instructions of the respondent-assessee, the goods were sold. The assessee received the sale proceeds in the same assessment year, namely, 1966-67. Instead of reversing the entries of the previous year relevant to the assessment year 1967-68, the respondent-assessee credited the sales account and debited the stores account. On account of the aforestated mistake, the respondent-assessee was shown to have made a profit, and when, this mistake was detected in the previous year relevant to the assessment year 1969-70, the respondent-assessee attempted to correct the entries wherein the loss was claimed as a deduction. The Allahabad High Court while disposing of the aforesaid controversy arrived at the conclusion that the loss could not have been claimed as a deduction in the assessment year 1969-70.

As against the judgment relied upon by the learned counsel for the respondent-revenue, learned counsel for the applicant-assessee has placed reliance upon the decision rendered by this Court in Commissioner of Income-Tax, Amritsar-I v. United India Woollen Mills (1981) 132 ITR 457. In the case relied upon by the learned counsel for the applicant-assessee, for the assessment year 1971-72 the respondent-assessee claimed deduction on account of payment of purchase tax. The liability to pay purchase tax had arisen in the year 1967-68. The respondent-assessee had maintained its accounts by following the mercantile system. The method of accounting adopted by the assessee being mercantile, the Assessing Officer rejected the claim of the respondent-assessee by holding that purchase tax could be deducted only during the year in which it had arisen. Since the

liability under reference is stated to have accrued during the years 1965-66 to 1967-68, the Assessing Officer rejected the claim of the respondent-assessee for a deduction in the assessment year 1971-72. On a reference of the aforesaid issue to this Court, it was held that income chargeable under the head “Profits and gain of business or profession” or “Income from other sources” would have to be computed according to the method of accounting employed by the respondent-assessee. Since the respondent-assessee had admittedly adopted the mercantile system of accounting, it was held that the respondent-assessee could not claim deduction during the assessment year 1971-72.

Having considered the judgments relied upon by the learned counsel for the rival parties, we are of the view that controversy in the instant reference cannot be adjudicated upon on the basis of either of the aforesaid judgments. We are of the view that the facts and circumstances of every case will have to be taken into consideration to determine the date when the liability was incurred. In the controversy in hand if the liability is accepted to have been incurred on 26.3.1978 when the goods/stock were destroyed by a fire which had broken down in the godowns of the PSWC during the financial year 1977-78 (assessment year 1978-79) then the proposition canvassed on behalf of the respondent-revenue will have to be upheld. However, if we arrived at the conclusion that liability was incurred on 31.5.1982 i.e. when the suit filed by the applicant-assessee was dismissed during the financial year 1982-83 (assessment year 1983-84) then the proposition canvassed at the hands of the learned counsel for the applicant-assessee will have to be accepted.

In the facts and circumstances of this case, the determination of

date when the loss was incurred will have to be derived from the admitted facts. It is not a matter of dispute that the fire which resulted in destruction of the stock of the applicant-assessee took place on 26.3.1978. The aforesaid fire destroyed the stock/goods of the applicant-assessee lying with the PSWC. Despite the destruction of the stock/goods during the financial year 1977-78 (assessment year 1978-79), the applicant-assessee consistently has been showing these goods in the inventory of the closing stock, stating therein, that these goods were lying with the PSWC. According to the learned counsel for the applicant-assessee, the aforesaid reflection was valid, bonafide and genuine because of the fact that applicant-assessee had never accepted that any loss had been incurred by the applicant-assessee in spite of fire on 26.3.1978 where his stock/goods were destroyed. The reason for the applicant-assessee to entertain the aforesaid belief was, because the responsibility/liability of the destruction of the stock/goods in the fire which took place in the godowns of the PSWC on 26.3.1978, was that of the PSWC itself, as the PSWC was the custodian of the stock/goods while they were stored in the godowns of the PSWC. It is therefore, that the applicant-assessee even filed a civil suit on 15.11.1978 claiming compensation for the said goods/stock. It is only when the claim raised by the applicant-assessee for reimbursement of the loss on account of the fire at the godowns of PSWC failed, that the applicant-assessee accepted for the first time that the aforesaid loss was not reimbursable, and as such, accepted the same as loss in the hands of the applicant-assessee. The applicant-assessee therefore, submitted a revised return of income on 14.3.1984 claiming a deduction on account of the loss of the aforesaid stock/goods.

It is apparent from the facts noticed in the foregoing paragraph

that the applicant-assessee in spite of the fire which destroyed stock/goods belonging to the applicant-assessee, did not accept the same as his own loss till the dismissal of the civil suit filed by him, and it is only after the dismissal of the aforesaid civil suit, that applicant-assessee acknowledged that he had incurred the said loss. Since the aforesaid civil suit was dismissed on 31.5.1982 i.e. during the financial year 1982-83 (assessment year 1983-84), we are of the view that the loss must be accepted to have incurred during the financial year 1982-83 (assessment year 1983-84). As such, we are satisfied that the revenue should have allowed the applicant-assessee a deduction of the aforesaid loss from its income in the assessment year 1983-84.

In view of the above, the instant reference is answered in favour of the applicant-assessee. We hereby conclude that the Tribunal erred in law in disallowing the claim of loss of Rs.1,48,950/- to the applicant-assessee in the assessment year 1983-84.

Disposed of in the aforesaid terms.

(J.S.Khehar)
Judge

(Nawab Singh)
Judge

24.2.2009
AS